

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF ALABAMA**

In re

Case No. 01-721-WRS

Chapter 7

ALABAMA PROTEIN RECYCLING, L.L.C.,

Debtor.

TOM MCGREGOR, Trustee,
CITY OF TROY INDUSTRIAL
DEVELOPMENT BOARD,

Plaintiffs,

v.

Adv. Pro. No. 02-3083-WRS

WILLIAM B. BLOUNT,
B.P. HOLDINGS, L.L.C.,

Defendants.

MEMORANDUM DECISION

This Adversary Proceeding is before the Court upon the motion of Defendants William B. Blount and B.P. Holdings, LLC, for a new trial or to alter, amend or vacate the judgment. (Doc. 62). On February 19, 2004, the Court entered judgment in favor of the Trustee in the amount of \$220,878.27. (Docs. 58 & 59). The Court heard argument on the instant motion on March 30, 2004. For the reasons set forth below, the motion is DENIED.

The Defendants have raised three issues: (1) whether the Trustee presented sufficient evidence; (2) whether the Court's findings are contrary to the evidence; and (3) whether the trucks were property of the estate. Because Defendants' third contention raises a threshold issue, the Court will

address it first, followed by the first and second contentions.

I. THE FIVE TRUCKS IN QUESTION WERE PROPERTY OF THE ESTATE

The Defendants' third contention is that the Court erred in finding that the trucks in question were property of the bankruptcy estate. The Court set out its factual findings in some detail in its February 19, 2004, Memorandum Decision. (Doc. 58, pp. 3-13). The Court's legal conclusion is set forth on pages 14 and 15 of the Memorandum Decision.

The Defendants argue that the Court's conclusion is in error, contending that the evidence established that the funds used to purchase the trucks were those of the Industrial Development Board of the City of Troy ("IDB") and not those of the Debtor, Alabama Protein Recycling ("APR"). (Doc. 62, p. 12). To briefly summarize the facts, 6.8 million dollars in Industrial Revenue Bonds were issued by the IDB. The assets purchased with bond proceeds were titled in the name of the Industrial Development Board and leased to APR. See PEX 2 & 3. In addition, the IDB assigned its interest to Regions Bank as indenture trustee. See PEX 3. Contrary to the Defendants' contention, the IDB had no economic interest in the trucks, or the bonds, after the assignment to Regions Bank. See PEX 3. The Defendant's claim that the five trucks in question were the property of the Industrial Development Board of the City of Troy is flatly contradicted by the terms of the Bond Indenture and the Lease. PEX 2 & 3.

It appears that the Defendants may be playing something of a shell game here, confusing the concepts of title and ownership, which are not necessarily the same. Four of the Certificates of Title issued by the Alabama Department of Revenue indicate that the holder of title was "IDB of the City of

Troy & Ala Protein Recycling Project.” PEX 12-15. One of the trucks was titled in the name of “Alabama Protein Recycling, LLC.” PEX 16. However, virtually all of the incidents of ownership of the trucks were transferred to APR pursuant to the lease agreement between the IDB and APR. PEX 2. One must bear in mind that property of the estate includes “all legal and equitable interests of the debtor.” 11 U.S.C. § 541(a)(1). The Defendants contention, that property of the estate is limited to that property to which the debtor holds title, is without merit.

The trucks in question were sold pursuant to a contract dated November 14, 2000. PEX 23.

Paragraph one of the contract states:

1. B.P. Holdings, LLC by and through its Managing Member, William B. Blount, specifically warrants that it is the majority member of APR and has legal power and authority to sell all of the assets in this contract and authority to enter into this agreement on behalf of APR.

Paragraph two of the contract states, in part:

2. APR agrees to sell and API agrees to purchase according to the following terms and conditions certain assets of APR [description of five trucks follows].

PEX 23.

The parties to the contract were American Proteins, Inc. and Alabama Protein Recycling, LLC. Defendant William Blount signed as the Managing Member of B.P. Holdings, LLC, which in turn was acting on behalf of APR. It strikes the Court that Defendant William Blount has been disingenuous, representing to American Proteins that the trucks in question were the property of APR, at the time they were sold for \$524,000.00, yet arguing in this Court that the trucks were the property of the Industrial Development Board of the City of Troy. The Defendants claim, that the trucks were not

property of the bankruptcy estate of APR, is without merit and is rejected.

II. THE TRUSTEE CARRIED HIS BURDEN OF PROOF AND ESTABLISHED THAT THE TRUCKS WERE TRANSFERRED FOR NO CONSIDERATION

The Defendants contend that the Trustee failed to carry his burden of proof.¹ The Court specifically found that the “Defendants intended to defraud other creditors of APR by placing these funds beyond their reach.” (Doc. 58, p. 17). Blount caused APR to sell five trucks for \$524,000.00 and then diverted the proceeds to Defendant B.P. Holdings. If there were no more to the story, the Court would have entered judgment in favor of the Trustee for \$524,000.00, rather than \$220,878.27.

However, the Defendants presented evidence showing that they had a defense as to part of the diverted proceeds. Bear in mind that in a fraudulent conveyance case, the plaintiff attempts to show that an insolvent debtor has placed his money beyond the reach of his creditors. The Defendants did not dispute that the proceeds of the sale were diverted to B.P. Holdings, but rather argued that B.P. Holdings was used as a conduit to pay debts owed by APR. The Court found that this was true with respect to some, but not all, of the transfers from B.P. Holdings.² The Defendants complain, quite incorrectly, that this Court improperly placed the burden of proof on them, rather than on the Trustee. (Doc. 62, p. 3). At page 19 of the Memorandum Decision, the Court states that “[h]aving found that the Defendants’ defense applies to a portion of the diverted sale proceeds, the Court will next consider whether the Trustee has proven his fraudulent conveyance case as to the remaining \$220,878.27.”

¹ This is denominated as Issue no. 1 in their motion. (Doc. 62).

² The Court discussed four different transfers as well as unaccounted for funds. See Memorandum Decision (Doc. 58, pp. 8-12).

(Doc. 58, p. 19). The Court found that the Trustee carried his burden, to the extent of \$220,878.27, but not as to the remaining funds. To put the matter differently, one might state that the Defendants rebutted the Trustee's case, to the extent of \$303,121.73, but not as to the remaining \$220,878.27. The Defendants' contention that the Court improperly placed the burden of proof on them is without merit.

**III. THE COURT'S FINDING THAT THE DEFENDANTS' FAILED
TO REBUT THE TRUSTEE'S CASE, TO THE EXTENT OF \$220,878.27,
IS SUPPORTED BY THE EVIDENCE**

The Defendants contend that the Court's judgment is against the weight of the evidence, citing lengthy passages of William Blount's testimony. The Defendants apparently fail to grasp that the Court rejected much of Blount's testimony. (Doc. 58, pp. 9-12). As the Court found that William Blount's testimony was, by and large, not credible, it cannot correctly be maintained that the Court's judgment is against the weight of the evidence. Having carefully reconsidered the evidence offered at trial, the Court concludes that its findings are adequately supported by the evidence and for that reason, rejects the Defendants' third contention.

IV. CONCLUSION

The Defendants raise three contentions in support of their motion for a new trial. First, they contend that the trucks in question were not property of the estate and therefore cannot provide a basis for a fraudulent conveyance suit. The Court finds that the trucks were, in fact, property of the estate, based upon the Bond Indenture and Lease agreements, as well as the contract for the sale of the trucks, wherein Defendant William Blount makes representations directly contrary to his contentions in this instance. Second, the Defendants contend that the Court improperly placed the burden of proof

upon them, rather than upon the Trustee. The Court correctly placed the burden of proof on the Trustee and the Court finds that he carried his burden to the extent of \$220,878.27. Third, the Defendants claim that the Court's judgment is against the weight of the evidence, citing the trial testimony of Defendant William Blount. As the Court rejected much of his testimony, this claim is without merit and must also be rejected. For these reasons, the Court denies the Defendants' motion. The Court will enter an separate order denying the Defendants motion for new trial.

Done this 24th day of May, 2004.

/s/ William R. Sawyer
United States Bankruptcy Judge

c: Floyd R. Gilliland, Attorney for Plaintiff
Leonard N. Math, Attorney for Plaintiff
Lee R. Benton, Attorney for Defendants